No. 86-1179

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

TECHNOGRAPH LIQUIDATING TRUST,

Petitioner,

v.

GENERAL MOTORS CORPORATION,

Respondent.

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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28 pp

INTRODUCTORY STATEMENT RE RELATED PETITION FOR CERTIORARI

Petitioner filed an appeal in the Federal Circuit. The Federal Circuit transferred the case to the Third Circuit pursuant to 28 U.S.C. §1631. Petitioner's motion in the Third Circuit to transfer the case back to the Federal Circuit was denied. Petitioner filed a "Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit" on December 17, 1986 (No. 86-1004) and an Opposition to the Petition was filed on January 16, 1987. The present Petition for a Writ of Certiorari is directed to the refusal of the Third Circuit to transfer the case back to the Federal Circuit and it deals with virtually the same issues as are involved in No. 86-1004, since if the Federal Circuit was correct in transferring the appeal to the Third Circuit, the Third Circuit was also correct in not sending the case back to the Federal Circuit.

QUESTIONS PRESENTED
(Affirmatively Stated)

1. The decision below will not affect anyone other than the parties to this thirty year old lawsuit. Even incorrectly assuming that this litigation still contains issues arising under the patent statutes, a decision on the jurisdictional question of whether the appeal should be heard by the U.S. Court of Appeals for the Federal Circuit or the U.S. Court of Appeals for the Third Circuit deals with a vanishing (or vanished) type of case, i.e., patent litigation where an appeal was taken to a regional court of appeals prior to the 1982 establishment of the Federal Circuit, where there was a remand for further proceedings and then another

appeal was filed after the 1982 establishment of the Federal Circuit. The facts of this case do not lend themselves to a definitive ruling by the U.S. Supreme Court establishing bright line boundaries for the jurisdiction of the Federal Circuit. Thus, the issues raised in the Petition are of no public importance and the Petition should be denied. *See, Rice v. Sioux City Cemetery*, 349 U.S. 70, 79 (1955).

2. Petitioner's suggestion (pp. 7, 10) that since the Federal Circuit came into existence in 1982 "the courts have been bombarded with a plethora of cases involving jurisdictional disputes between the Federal Circuit and the regional circuit courts of appeal" is without record support. The only case cited by petitioner in which the Federal Circuit and another court of appeals disagreed on which court had jurisdiction is *Christianson v. Colt Industries Operating Corp.*, 798 F.2d 1051 (7th Cir. 1986). That case is clearly distinguishable from the present case—there were still substantial patent issues in *Christianson* and there had been no prior appeals. In the present case, all patent issues were finally adjudicated long ago, and there have been three earlier appeals to the Third Circuit.

Here, The Federal Circuit and the Third Circuit are in complete agreement that the appeal should be heard by the Third Circuit. The fact that there is a jurisdictional dispute in *Christianson, Id.*, provides no basis for granting certiorari in this case.

3. The subject of the Petition for Certiorari is an interlocutory transfer order. Consequently, in addition to the normally heavy burden which must be met to obtain the grant of a certiorari petition, petitioner has a still further burden of showing truly extraor-

dinary circumstances justifying certiorari on a non-final order. *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916); *Brotherhood of Locomotive Firemen v. Bangor & Aroostock R. Co.*, 389 U.S. 327, 328 (1967). That burden has not even been approached here.

4. The Federal Circuit was correct in transferring the appeal to the Third Circuit pursuant to 28 U.S.C. §1631 and the Third Circuit was correct in refusing to transfer the case back to the Federal Circuit because there was no jurisdiction in the Federal Circuit, all patent issues in the litigation having been finally adjudicated years ago. Also, as required by §1631, it was in the interest of justice to transfer the case to the Third Circuit because the Third Circuit has already decided three previous appeals in this litigation involving patent and non-patent issues.

TABLE OF CONTENTS

	Page
INTRODUCTORY STATEMENT RE RELATED PETITION FOR CERTIORARI	i
QUESTIONS PRESENTED (AFFIRMATIVELY STATED)	i
TABLE OF AUTHORITIES	v
OPINIONS BELOW, JURISDICTION, AND STATUTES INVOLVED	1
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE WRIT	4
CONCLUSION	14
APPENDIX	
STATEMENT PURSUANT TO SUPREME COURT RULE 28.1	1a

TABLE OF AUTHORITIES

CASES:	Page
Arizona v. California, 460 U.S. 605 (1983)	13
Atari, Inc. v. JS & A Group, Inc., 747 F.2d 1422 (Fed.Cir. 1984)	6,9,11
Brotherhood of Locomotive Firemen v. Bangor & Aroostock R. Co., 389 U.S. 327 (1967)	iii,8
Central Soya Co., Inc. v. Geo. A. Hormel & Co., 723 F.2d 1573 (Fed.Cir. 1983)	5,12,13,14
Christianson v. Colt Industries Operating Corp., 798 F.2d 1051 (7th Cir. 1986)	ii,6,7
Devex Corp. v. General Motors Corp., 467 F.2d 257 (3d Cir. 1982), *cert. denied* 411 U.S. 973 (1973)	2
Devex Corp. v. General Motors Corp., 667 F.2d 347 (3d Cir. 1981)	2
Devex Corp. v. General Motors Corp., 749 F.2d 1020 (3d Cir. 1984), *cert. denied*, U.S. , 106 S.Ct. 68 (1985)	3
Devex Corp. v. General Motors Corp., 54 USLW 3228 (October 7, 1985)	3
General Motors Corp. v. Devex Corp., 456 U.S. 988 (1982)	3
General Motors Corp. v. Devex Corp., 461 U.S. 648 (1983)	3
Hamilton-Brown Shoe Co. v. Wolf Bros. Co., 240 U.S. 251 (1916)	iii,8
Hohri v. U.S., 782 F.2d 227 (D.C. Cir. 1986), *cert. granted*, 55 USLW 3348	5
Professional Managers Ass'n v. U.S., 761 F.2d 740 (D.C. Cir. 1985)	6
Rice v. Sioux City Cemetery, 349 U.S. 70 (1955)	ii,5

Table of Authorities Continued

	Page
Schwartzkopf Development Corp. v. Ti-Coating Inc., 800 F.2d 240 (Fed.Cir. 1986)	9
USM Corporation v. SPS Technologies, Inc., 770 F.2d 1035 (Fed.Cir. 1985)	9,10,11
Van Drusek v. Lehman, 762 F.2d 740 (D.C. Cir. 1985)	6
28 U.S.C. §1295	6,7,9,12
28 U.S.C. §1338	8,9
28 U.S.C. §1631	i,iii,2,4,10,12
35 U.S.C. §112	14
House Report No. 312, 97th Congress, 1st Session (1981)	7
Senate Report No. 275, 97th Congress, 1st Session (1981)	7
1982 *U.S. Code Congr. & Adm. News*, pp. 11, 29, 30	7,9
Supreme Court Rule 49.2	15
18 C. Wright, A. Miller and E. Cooper, *Federal Practice and Procedure*, §4478 (1981 and Supp. 1986)	13

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OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

OPINIONS BELOW, JURISDICTION, AND STATUTES INVOLVED

General Motors agrees with petitioner's recitation of the Opinions below, the jurisdiction of this Court and the statutes involved, except that General Motors disagrees with petitioner's interpretation of some of these statutes and its suggestion that there continue to be any issues arising under the patent statutes in this lawsuit.

STATEMENT OF THE CASE

Petitioner's present appeal from the latest decision of the U.S. District Court for the District of Delaware

was filed in the U.S. Court of Appeals for the Federal Circuit, and General Motors' motion under 28 U.S.C. §1631 to transfer the appeal to the U.S. Court of Appeals for the Third Circuit was granted by the Federal Circuit. Petitioner's motion in the Federal Circuit for reargument of the transfer motion and its suggestion that the motion be reheard en banc were each denied. Petitioner's motion in the Third Circuit seeking transfer back to the Federal Circuit was also denied. (Appendices A-F to the Petition). The transfer order of the Federal Circuit is the subject of a Petition for a Writ of Certiorari in No. 86-1004 pending in this Court. The present brief in opposition is directed to the Petition for Certiorari dealing with the Order of the Third Circuit refusing to transfer the appeal back to the Federal Circuit (Appendix F to the Petition).

The subject matter of petitioner's appeal from the District Court deals with (1) the non-patent issue of whether petitioner is entitled to additional interest on postjudgment interest paid into Court by General Motors and (2) reconsideration of the already finally adjudicated question of whether petitioner was entitled to damages relating to General Motors' production of non-bumper parts.

The U.S. Court of Appeals for the Third Circuit has already heard and decided the following three appeals from the U.S. District Court for the District of Delaware in this thirty year old litigation:

1. *Devex Corp. v. General Motors Corp.*, 467 F.2d 257 (3d Cir. 1972), *cert. denied*, 411 U.S. 973 (1973) ruled on patent infringement issues.

2. *Devex Corp. v. General Motors Corp.*, 667 F.2d 347 (3d Cir. 1981) affirmed the District Court's "Final

Judgment" awarding over $8.8 million for bumper part infringements, over $11 million in prejudgment interest and denying damages relating to non-bumper parts. Certiorari was granted on the prejudgment interest issue and the Third Circuit's decision was affirmed by this Court, *General Motors Corp v. Devex Corp.*, 461 U.S. 648 (1983). Certiorari was denied the present petitioner on the non-bumper parts damages issue, 456 U.S. 988 (1982).

3. *Devex Corp. v. General Motors Corp.*, 749 F.2d 1020 (3d Cir. 1984) affirmed a ruling awarding petitioner over $7 million in postjudgment interest and interest on costs and denying petitioner compound interest on the postjudgment interest. This appeal was decided by the Third Circuit even though the Federal Circuit was in existence at the time the appeal was filed. Petitioner concedes that the Third Circuit had jurisdiction over this appeal because "[t]here were no patent law issues involved in that appeal" (Petition, p. 5). Certiorari was denied on petitioner's attempt to obtain compound interest on postjudgment interest and also on petitioner's attempt to reopen the issue of damages for non-bumper parts infringement, ___ U.S. ___, 106 S.Ct. 68 (1985). In addition to the petition for certiorari, petitioner also filed a "Motion for Leave to File Out-of-Time Petition for Rehearing" on the non-bumper parts damages issue. This was also denied. 54 USLW 3228 (October 7, 1985).

Early in 1986, petitioner filed a motion in the U.S. District Court for the District of Delaware seeking additional interest on the postjudgment interest judgment and the interest on cost judgment General Motors had paid into the District Court in 1983, pending

the appeal on these matters to the Third Circuit. Since the District Court still supposedly had this tag-end interest issue before it, petitioner also suggested that the District Court had the power to re-examine the long-since finally decided non-bumper parts damages issue. Petitioner's motions were denied by the District Court on June 27, 1986. The District Court noted in its Opinion that this litigation "threatens to outlast all human participants" (Appendix G to the Petition; p. 10a).

As noted, petitioner appealed to the U.S. Court of Appeals for the Federal Circuit and General Motors' motion under 28 U.S.C. §1631 to transfer to the Third Circuit was granted. Petitioner's motion for reargument and suggestion that the motion be reheard en banc were each denied as was petitioner's motion in the Third Circuit to transfer the case back to the Federal Circuit.

REASONS FOR DENYING THE WRIT

1.

The transfer by the Federal Circuit to the Third Circuit and the Third Circuit's refusal to transfer the case back to the Federal Circuit affects no one but the parties to this lawsuit and will not serve as precedent for future cases. The Third Circuit decided two appeals in this case prior to 1982 dealing with infringement, damages and prejudgment interest. One of these appeals included the non-bumper parts damages issue. The Third Circuit also heard an appeal in 1984 dealing with postjudgment interest. Since October 1982, the Federal Circuit has had jurisdiction over appeals in cases from federal district courts involving continuing issues of patent law. The factual

situation in this case where appeals were heard on patent issues by a regional court of appeals prior to 1982 and still further appeals are filed after 1982 is unlikely to occur again as we move further in time from 1982. Even in 1983 the Federal Circuit referred to such situations as "transitory". *Central Soya Co., Inc. v. Geo. A. Hormel & Co.*, 723 F.2d 1573, 1580 (Fed.Cir. 1983).

The facts of this case (unlike the facts in *Hohri v. U.S.*, 782 F.2d 227 (D.C.Cir. 1986), certiorari granted, 55 USLW 3348, dealing with the jurisdiction of the Federal Circuit in Tucker Act cases) do not present the Supreme Court with an opportunity to draw a clear line for future cases between the jurisdiction of the Federal Circuit and the jurisdiction of the regional courts of appeal. The issues raised in the Petition are of no public importance and do not warrant review by the Supreme Court. *See Rice v. Sioux City Cemetery*, 349 U.S. 70 (1955). Indeed, the Order of the Federal Circuit transferring the appeal in the instant case to the Third Circuit stated (Appendix B to the Petition, p. 2a):

> *NOTE*: This Order will not be published in a printed volume because it does not add significantly to the body of law and is not of widespread legal interest. It is a public record. It is not citable as precedent.

2.

Petitioner's suggestion (pp. 7, 10) that since the Federal Circuit came into existence in 1982 "the courts have been bombarded with a plethora of cases involving jurisdictional disputes between the Federal Circuit and the regional circuit courts of appeal" is

without record support. The only case cited by petitioner in which the Federal Circuit and another court of appeals disagreed on which court had jurisdiction is *Christianson v. Colt Industries Operating Corp.*, 798 F.2d 1051 (7th Cir. 1986). That case is clearly distinguishable from the present case—there were still substantial patent issues in *Christianson* and there had been no prior appeals. In the present case, all patent issues were finally adjudicated long ago, and there have been three earlier appeals decided by the Third Circuit.

Here, the Federal Circuit and the Third Circuit are in complete agreement that this appeal should be heard by the Third Circuit. The fact that there is a jurisdictional dispute in *Christianson, Id.*, provides no basis for granting certiorari in this case.

The cases cited in footnote 10 of *Christianson v. Colt*, 798 F.2d at 1058 referred to by petitioner (Petition, p. 8) do not deal with jurisdictional disputes between the Federal Circuit and other courts of appeal. In *Van Drusek v. Lehman*, 762 F.2d 1065 (D.C.Cir. 1985) and *Professional Managers Ass'n v. U.S.*, 761 F.2d 740 (D.C.Cir. 1985), the D.C. Circuit transferred appeals to the Federal Circuit without any dispute from the Federal Circuit. In *Atari, Inc. v. JS & A Group, Inc.*, 747 F.2d 1422 (Fed.Cir. 1984), the Federal Circuit denied a motion to transfer—again there was no dispute involved with any other circuit.

These decisions deal with an exploration of whether the cases contained continuing, material, non-frivolous issues within the jurisdiction of the Federal Circuit as set forth in 28 U.S.C. §1295. This is precisely the exploration the legislative history of the statute establishing the Federal Circuit directed should take

place in determining whether or not the Federal Circuit has jurisdiction in a given case. Senate Report No. 275, 97th Congress, 1st Session, pp. 19, 20 (1981), reprinted in 1982 *U.S. Code Cong. & Admin. News*, pp. 11, 29, 30. The instant case clearly does not contain any continuing, material, non-frivolous issues arising under the patent statutes.

It is not surprising that when a new court is created there are going to be discussions in some cases concerning the limits of that court's jurisdiction. Indeed, the legislative history of §1295 states:

> Should questions legitimately arise respecting. . .the direction of appeals in particular cases, the committee expects the Courts to establish, as they have in similar situations, jurisdictional guidelines respecting such cases.

Senate Report No. 275, 97th Congress, 1st Session (1981); House Report No. 312, 97th Congress, 1st Session (1981).

Petitioner, however, has cited no case other than *Christianson v. Colt*, 798 F.2d 1051, where these discussions led to "ping pong" (Petition. p. 7) between the Federal Circuit and a regional court of appeals.

3.

The subject of the Petition for Certiorari is an interlocutory transfer order of the Federal Circuit to the Third Circuit and the Third Circuit's refusal to transfer the appeal back to the Federal Circuit. Thus, in addition to the normally heavy burden which must be met to obtain the grant of a certiorari petition, petitioner has a still further burden of showing truly extraordinary circumstances justifying certiorari on a

non-final order. *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916); *Brotherhood of Locomotive Firemen v. Bangor & Aroostock R. Co.*, 389 U.S. 327, 328 (1967). That burden has not even been approached here.

4.

As stated above, whether right or wrong, the rulings of both the Federal Circuit and Third Circuit that the appeal should be decided by the Third Circuit do not deal with issues worthy of certiorari. The fact is, however, that the decisions by the Federal Circuit and the Third Circuit are clearly correct, for the reasons which follow, and nothing would be served by the grant of a petition for certiorari in this case or in No. 86-1004.

A. THERE ARE NO ISSUES ARISING UNDER THE PATENT STATUTES REMAINING IN THIS CASE.

No unadjudicated issues arising under the patent statutes remain in this case, since all patent issues were finally adjudicated years ago. While the case contained substantial patent issues for a long time, there are none now present. The Third Circuit decided the non-bumper parts damages issue in 1981 and certiorari thereon was denied in 1982. Certiorari was again denied on the same issue in 1985 as was a "Petition for Leave to File Out-of-Time Petition for Rehearing" on the earlier denial of certiorari.

Thus, in June 1986, when the District Court rendered its last decision, its jurisdiction was based on its control over General Motors' payment into Court of postjudgment interest, not "in whole or in part on Section 1338," the jurisdictional statute covering patent suits.

The Federal Circuit has no jurisdiction over appeals if issues arising under the patent statutes no longer continue in the case or if such issues are not material or are frivolous, notwithstanding the fact that the complaint when filed alleged jurisdiction under 28 U.S.C. §1338. 28 U.S.C. §1295(a)(1); *USM Corporation v. SPS Technologies, Inc.*, 770 F.2d 1035 (Fed.Cir. 1985); *Atari, Inc. v. JS & A Group, Inc.*, 747 F.2d 1422 (Fed.Cir. 1984); *Schwartzkopf Development Corp. v. Ti-Coating Inc.*, 800 F.2d 240 (Fed.Cir. 1986); 1982 *U.S. Code Cong. & Adm. News*, pp. 11, 29, 30.

In *USM Corporation, Id* at 1037, the appeal was properly transferred from the Federal Circuit to the Seventh Circuit because "all patent claims had been finally adjudicated well in advance of the issue presently on appeal." In *Atari, Inc. v. JS & A Group, Inc.*, 747 F.2d 1422, a motion to transfer was denied because the case "was *and still is* based. . ." (p. 1429) on issues arising under the patent statutes. Here there are no issues still present based on the patent statutes.

In *Schwartzkopf Development Corp. v. Ti-Coating Inc.*, 800 F.2d 240, the Federal Circuit transferred an appeal to the Second Circuit holding that even if it be assumed that *bona fide* patent counts had been in the case at one time, if they had been finally removed from the case, the Federal Circuit had no jurisdiction over an appeal.

The non-bumper parts damages issue which was in the instant case is not by any realistic standard still in the case, and its attempted revisiting after final determination years ago is trivial, frivolous and immaterial. The other issue on appeal is a postjudgment

interest question which even petitioner does not contend has anything to do with patents (Petition, p. 10).

B. The Ruling Of The Federal Circuit Transferring The Appeal To The Third Circuit And The Ruling Of The Third Circuit Refusing To Send The Case Back To The Federal Circuit Were In Accord With 28 U.S.C. §1631

Petitioner criticizes the Federal Circuit for transferring this case to the Third Circuit in the interest of judicial efficiency and the Third Circuit for not transferring the case back to the Federal Circuit, when 28 U.S.C. §1631 speaks of transferring where there is a "want of jurisdiction, . . . if it is in the interest of justice. . ." (Petition, pp. 7, 9). The Federal Circuit, having dealt with 28 U.S.C. §1631 many times, is obviously aware of its requirements.* What the Federal Circuit did here in its two page Order is the same thing it did in *USM Corporation, Id.* (which was cited in the two-page Order), where it spelled out its lack of jurisdiction in an opinion.

In *USM Corporation, Id.*, the Federal Circuit phrased the issue quite properly to be whether it had jurisdiction (770 F.2d at 1036):

> This appeal *raises the question of our jurisdiction* over an appeal where the Seventh Circuit has finally adjudicated all patent issues and only non-patent issues remain, in a case where the jurisdiction of the district

* If the Federal Circuit thought it had made a mistake in transferring this case to the Third Circuit or in not adequately explaining its reasons for transfer, it had opportunities to make corrections when petitioner filed a motion for reargument and suggestion that the rehearing be in banc. Both were denied (Appendices C and D to Petition).

> court was originally based, in part, upon 28 U.S.C. §1338(a). (emphasis added).

This question was appropriately resolved, as here, by considering judicial efficiency (770 F.2d at 1037):

> Policies of judicial efficiency favor transferring the appeal to the Seventh Circuit. This case has already been before the Seventh Circuit twice on appeal with many of the underlying issues fully briefed by the parties to that court.

Petitioner's position would decimate both the law established in *USM Corporation*, 770 F.2d 1035 and the purpose for which the Federal Circuit was established. The plaintiff in *USM Corporation* could also have suggested that once any aspect of a case remains open—no matter how tag-end, minor or severable—everything that occurred in the case from its beginning is fair game for reconsideration. Such a suggestion, however, is impractical, illogical and contrary to existing law.

The Federal Circuit in *Atari, Inc. v. JS & A Group, Inc.*, 747 F.2d 1422 (Fed.Cir. 1984) correctly made it clear that in appropriate situations it could rule it had no jurisdiction based on considerations such as judicial efficiency (*Id.* at 1428, 1429):

> The present motion enables the court, with the appreciated cooperation of ten *amici*, to respond in part to *Congress' expectation that it would formulate appropriate standards for determining jurisdiction.*
>
> * * *
>
> That this court upholds its jurisdiction here

> does not preclude a contrary holding in future, different cases. Nor does it preclude transfer under 28 U.S.C. §1631 of an appeal so devoid of patent issues, present or potential, as to suggest transfer. Federal courts have declined jurisdiction over pendent and ancillary claims *in the interest of "judicial economy, convenience, and fairness to litigants." United Mine Workers of America v. Gibbs*, 383 U.S. 715, 726, 86 S.Ct. 1130, 1139, 16 L.Ed.2d 218 (1966) (emphasis added).

The actions of the Federal Circuit and the Third Circuit were correct and in complete accord with 28 U.S.C. §1295 dealing with the jurisdiction of the Federal Circuit and §1631 dealing with transfers from one court to another.

C. PETITIONER'S CITATIONS ARE NOT IN POINT

i. In *Central Soya Co. Inc. v. Geo. A. Hormel & Co.*, 723 F.2d 1573 (Fed.Cir. 1983) (Petition, pp. 9, 10, 11) the Tenth Circuit heard the appeal from the District Court's patent liability ruling but the appeal from the subsequent patent accounting trial was properly directed to the then newly created Federal Circuit. In *Central Soya*, contrary to this case, there had not been a final adjudication of all material issues arising under the patent statutes, so the post 1982 appeal clearly belonged in the Federal Circuit. In the present case, petitioner went into the District Court on a tag-end general law issue of whether it was entitled to additional interest on money previously deposited in the District Court to satisfy a judgment. Petitioner added to this issue a piggy-back motion for reconsideration of the long-ago finally adjudicated non-bumper patent issue. This transparent attempt to res-

urrect a spurious patent issue which is incapable of resurrection does not transfer to the Federal Circuit exclusive jurisdiction over the appeal from the Third Circuit which has already finally decided three appeals in this case.

In *Central Soya*, since patent issues were still in the case, the Federal Circuit applied the "law of the case" doctrine to the previous decision of the Tenth Circuit. The Court noted (p. 1580) that the law of the case doctrine "acts as a heavy deterrent" to changing prior decisions in a case, but that there are certain "exceptional circumstances" where a prior interlocutory ruling is not adhered to (Petition, p. 11). Petitioner suggests (p. 9) that "the parties' dispute regarding the contours of the 'law of the case' doctrine . . . in the context of a patent case is itself a patent question." This suggestion, however, relies on two false premises, i.e., (1) that this case is still a patent case and (2) the "law of the case" doctrine has any applicability at all to the non-bumper parts damages issue—"Law of the case" does not apply after a final judgment. *Arizona v. California*, 460 U.S. 605, 618-19 (1983); 18 C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure*, §4478 (1981 and Supp. 1986). The non-bumper damages issue was determined by the Special Master, the District Court (which issued a "Final Judgment" on October 6, 1980), and the Third Circuit (which affirmed the "Final Judgment" of the District Court). Petitions for certiorari on the point have been repeatedly denied. It is hard to imagine anything more final.

ii. Petitioner's reliance (Petition, pp. 8, 11) on the Seventh Circuit's ruling in *Christianson v. Colt In-*

dustries Operating Corp., 798 F.2d 1051 (7th Cir. 1986) is also misplaced. Colt had been sued under the antitrust laws in a Complaint which the Seventh Circuit felt necessarily included within its scope important patent issues. The linchpin of the District Court's 1984 ruling being appealed was that nine patents of Colt did not meet the "best mode" requirements of 35 U.S.C. §112 so they "were invalid ab initio." There had never "been a prior plenary appellate decision on the merits." Consequently, the Seventh Circuit was of the opinion that the appeal included many still existing substantial issues which " 'arose under' " the patent laws which should be decided by the Federal Circuit (*Id.* at 1062).

The *Christianson v. Colt* situation is in stark contrast to our case in which all patent issues have been finally adjudicated. Also, as mentioned earlier, in *Christianson v. Colt* there was a dispute between the Federal Circuit and the Seventh Circuit as to which Court had jurisdiction over the appeal. In the instant case, the Federal Circuit and the Third Circuit are in complete agreement that the appeal should be in the Third Circuit.

If *Christianson v. Colt* (argued in the Federal Circuit on October 6, 1986 and not yet decided) is going to sow the seeds for "endless disputes" (Petition, p. 10) between the Federal Circuit and other federal courts of appeal regarding jurisdiction over some appeals, that is perhaps the case for certiorari. The present case is thirty years old and is too exhausted to sow any seeds.

CONCLUSION

Petitioner cannot convert a non-patent appeal to a patent appeal by a belated request for reconsideration

of an issue finally adjudicated by the Third Circuit. By this ploy, petitioner seeks to have the Federal Circuit review and reverse a final decision of another U.S. circuit court of appeals with which petitioner disagrees. It is axiomatic that the Federal Circuit reviews patent decisions of federal district courts not final decisions of regional courts of appeal.

The Third Circuit has carefully studied on three separate occasions voluminous records and detailed briefs, and it has finally decided every patent issue involved in this endless litigation Certiorari was denied on the non-bumper parts damages issue in 1982.

In 1985, petitioner again sought certiorari on the non-bumper parts damages issue which was denied. Also in 1985, petitioner filed a motion for leave to file an out-of-time petition for rehearing as to the 1982 denial. This, too, was denied.

Now, petitioner files the instant petition for certiorari which is surely but a prelude to still another petition for certiorari when the Third Circuit denies petitioner's latest attempt to reopen the non-bumper parts damages issue. The U.S. Supreme Court and the lower federal courts are overworked enough without being required to rule numerous times on the same points. This case is a prime candidate for action under U.S. Supreme Court Rule 49.2 ("[w]hen an appeal or petition for writ of certiorari is frivolous, the Court may award the appellee or respondent appropriate damages").

For the reasons stated above, the Petition should be denied and damages should be awarded General Motors under Rule 49.2.

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DATED: February 13, 1987

APPENDIX

STATEMENT PURSUANT TO SUPREME COURT RULE 28.1

Please note that this Rule 28.1 Statement supplements the Rule 28.1 Statement filed with the Brief in Opposition in related #86-1004.

Pursuant to Supreme Court Rule 28.1, the following information is provided by counsel of record for General Motors Corporation.

General Motors Corporation is not a subsidiary or an affiliate of a publicly owned corporation. All subsidiaries and affiliates of General Motors Corporation are wholly-owned except:

Alambrados y Circuitos Electricos, S.A. de C.V. (Mexico)

Aralmex, S.A. de C.V. (Mexico)

Automotriz Gencor S.A. (Ecuador)

Autos y Maquinas del Ecuador S.A. (AYMESA) (Ecuador)

Cableados de Juarez, S.A. de C.V. (Mexico)

CABLESA-Industria de Componentes Electricos Limitada (Portgual)

Compania Nacional de Direcciones Automotrices, S.A. de C.V. (Mexico)

Componentes Mecanicos de Matamoros, S.A. de C.V. (Mexico)

Compresores Delfa, C.A. (Venezuela)

Conductores y Componentes Electricos, de Juarez, S.A. de C.V. (Mexico)

Convesco Vehicle Sales GmbH (West Germany)

Daewoo Automotive Components, Ltd. (Korea)

Daewoo Motor Co., Ltd. (Korea)

Delmex de Juarez, S.A. de C.V. (Mexico)

Delnosa, S.A. de C.V. (Mexico)

Delredo, S.A. de C.V. (Mexico)

Deltronics de Matamoros, S.A. de C.V. (Mexico)

DHB—Componentes Automotivos S.A. (Brazil)

Fabrica Colombiana de Automotores S.A. ("Colomotores") (Columbia)

General Motos Argentina S.A. (in liquidation) (Argentina)

General Motors de Colombia S.A. (Columbia)

General Motors Egypt, S.A.E. (Egypt)

General Motors Espana, S.A. (Spain)

General Motors France (France)

General Motors Hellas, A.B.E.E. (Greece)

General Motors-Holden's Limited (Australia)

General Motors Iran Limited (Iran)

General Motors Kenya Limited (Kenya)

General Motors Korea Co., Ltd. (Korea)

General Motors del Peru S.A. (Peru)

General Motors de Portugal, Limitada (Portugal)

General Motors Terex do Brasil Ltda. (Brazil)

GM Allison Japan Limited (Japan)

GM Fanuc Robotics Corp. (USA)

GM Locomotivas Ltda. (Brazil)

Hua Tung Automotive Corporation (Rep. of China)

Industries Mecaniques Maghrebires, S.A. (Tunisia)

Industrija Delova Automotila, Kikinda (Yugoslavia)

INLAN-Industria de Componentes Mecanicos, Lda. (Portugal)

Isuzu Motors Limited (Japan)

Isuzu Motors Overseas Distribution Corp. (Japan)

Kabelwerke Reinshagen GmbH (West Germany)

Kabelwerke Reinshagen Werk Berlin (West Germany)

Kabelwerke Reinshagen Werk Neumarkt GmbH (West Germany)

Moto Diesel Mexicana, S.A. de C.V. (Mexico)

Motor Enterprises, Inc. (USA)

New United Motor Manufacturing, Inc. (USA)

Omnibus BB Transportes, S.A. (Ecuador)

Proburg Properties (Proprietary) Limited (South Africa)

Procastle (Proprietary) Limited (South Africa)

Promotora de Partes Electronicos Automotrices (Mexico)

Propine Properties (Proprietary) Limited (South Africa)

P.T. Mesin Isuzu Indonesia (Indonesia)

Rimir, S.A. de C.V. (Mexico)

Rio Bravo Electricos, S.A. de C.V. (Mexico)

Saudi American Machinery Maintenance Company (SAMMCO) (Saudi Arabia)

Senalizacion y Accesorios del Automovil Yorka, S.A. (Spain)

Sistemas Electricos y Conmutadores, S.A. de C,V. (Mexico)

Suzuki Motor Co., Ltd. (Japan)

Unicables, S.A. (Spain)

Vauxhall Motors Limited (England)

Vestiduras Fronterizas, S.A. de C.V. (Mexico)

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